

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

WINCHAUS A. HAYES,

Petitioner,

v.

Case No. 2:22cv287

D. LEU,

Respondent.

FINAL ORDER

Before the Court is a Petition for a Writ of Habeas Corpus, filed pursuant to 28 U.S.C. § 2241. ECF No. 1. In his Petition, the *pro se* Petitioner seeks a reduction of his sentence pursuant to the First Step Act. *Id.* On May 12, 2023, the Respondent filed a Motion to Dismiss. ECF No. 12. Petitioner did not file a response.

The matter was referred for disposition to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B)–(C), Federal Rule of Civil Procedure 72(b), Local Civil Rule 72, and the April 2, 2002, Standing Order on Assignment of Certain Matters to United States Magistrate Judges. ECF No. 3. In a Report and Recommendation entered on November 3, 2023, the Magistrate Judge recommended that the relief sought by Respondent's Motion to Dismiss be GRANTED, and the Petition be DENIED AND DISMISSED WITH PREJUDICE. ECF No. 16. The parties were advised of their right to file written objections to the Report and Recommendation. Neither Petitioner nor Respondent filed objections with the Court.¹

¹ The Report and Recommendation recommended dismissal of the Petition on the grounds that Petitioner has been released from custody. ECF No. 16. The Court mailed a copy of the Report and Recommendation to Petitioner at his last known address, and it was returned to sender as "UNABLE TO FORWARD." ECF No. 17.

Having reviewed the record and having heard no objection, the Court agrees with the Report and Recommendation on the grounds stated by the Magistrate Judge and **ADOPTS and APPROVES** the Report and Recommendation, ECF No. 16, in its entirety as the Court's own opinion. Accordingly, Respondent's Motion to Dismiss, ECF No. 12, is **GRANTED**, and the Petition, ECF No. 1, is **DENIED** and **DISMISSED WITH PREJUDICE**. It is **ORDERED** that judgment be entered in favor of the Respondent.

Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a *written* notice of appeal with the Clerk of the Court at the Walter E. Hoffman United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date judgment is entered. Because Petitioner has failed to demonstrate a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c) and Federal Rule of Appellate Procedure 22(b)(1), the Court declines to issue a certificate of appealability. *See Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003).

The Clerk is **DIRECTED** to forward a copy of this Order to Petitioner at his last known address and to counsel of record for Respondent.

It is so **ORDERED**.


/s/
Elizabeth W. Hanes
United States District Judge

Elizabeth W. Hanes
United States District Judge

Norfolk, Virginia
Date: February 12, 2024